REMARKS

Applicant respectfully traverses the restriction requirement of the Office Action mailed June 8, 2005. Under 35 U.S.C. § 121, the Commissioner may require restriction if two or more "independent and distinct" inventions are claimed in one application. In 37 C.F.R. § 1.141, the statement is made that two or more "independent and distinct inventions" may not be claimed in one application. See also MPEP § 802.01. In the detailed action, the Examiner groups applicant's claims into four groups and asserts that each group constitutes an invention that is distinct from the others. The Examiner does not assert that grouped claims constitute independent inventions.

The term "distinct" means that two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, but are capable of separate manufacture, use, or sale as claimed, and are patentable (novel and unobvious) over each other. See MPEP § 802.01.

If an application contains an allowable generic claim, a reasonable number of otherwise divisible species claims will be examined in a single application if the species claims are either written in dependent from, or otherwise include all the limitations of the generic claim. In such a case, a restriction requirement is not proper because the species claims are automatically allowable and no further search is required. See 37 C.F.R. § 1.141. Groups I and II are in this category with respect to each other, as are Groups III and IV.

For example, with respect to Groups I and II, claim 5 from Group I can be considered a generic claim, and claim 16 from Group II can be considered a species claim that includes elements that parallel all the elements of claim 5, but that additionally includes elements relating to setting a timer and resending. Likewise, with respect to Groups III and IV, claim 21 from Group III can be considered a generic claim, and claim 26 from group IV can be considered a species claim that includes elements
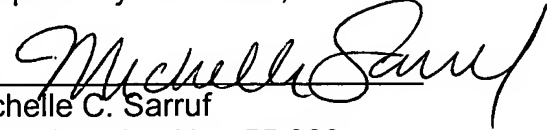
that parallel all the elements of claim 21, but that additionally includes elements relating to setting a timer and resending. Accordingly, at the very least, Groups I and II should be combined to form a larger group and Groups III and IV should be combined to form a larger group.

Subcombinations are distinct from each other only if they are shown to be separately usable. See also MPEP § 806.05(d). In such a case where subcombinations are not separately usable, a restriction requirement is improper. In the present case, Groups I and III form an example of a subcombination that is not separately usable, as do Groups II and IV. For example, Claim 5 from Group I demonstrates a method from the perspective of a data receiving unit, whereas claim 21 demonstrates a parallel method from the perspective of the apparatus or system that sends data to the data receiving unit. In this way, they are not separately usable (having a data sender without a data receiver would not make sense). The claims from Groups II and IV follow a similar pattern. Because the claims in these groupings discussed are not separately usable and because, as discussed above, Groups I and II should be combined to form a single group and Groups III and IV should be combined to form a single group a restriction requirement is not proper with respect to any of the claims. However, at the very least, Groups I and III should be combined to form a single group (herein, "Group C") and Groups II and IV should be combined to form a single group (herein, "Group D.")

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0665, under Order No. 364388016US1 from which the undersigned is authorized to draw.

Dated: Respectfully submitted,

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